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34704 7590 06/29/2010 BACHMAN & LAPOINTE, P.C. 900 CHAPEL STREET SUITE 1201 NEW HAVEN, CT 06510				
EXAMINER				
BODAWALA, DIMPLE N				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## **DETAILED ACTION**

### ***Response to Amendment***

1. The proposed amendment to the claims 27-28 cite new claimed language such as, “...**the mold containing a consumable material...**”, wherein such claimed limitation of claims 27-28 have not been defined earlier, therefore, reconsideration of the prior arts of record, as well as possible consideration of other arts would be necessary to determine if the new claimed limitations were not taught or suggested by the prior arts of record. Applicant’s arguments relating to the new claimed limitation of claims 27-28 according to proposed amendment have been fully considered, but they are moot as the amendment will not be entered.

### ***Response to Arguments***

2. For rejection of claims 27-28 under 35 USC 112, second paragraph, wherein Applicant argues that the amendment to independent claims 27 and 28 are made to provide proper antecedent basis for the limitation within the claims, and these amendments overcome the rejection of claims under 35 USC 112, second paragraph.
3. Applicant’s arguments are fully considered and found persuasive, and, therefore, rejection of claims 27-28 under 35 USC 112, second paragraph has been withdrawn in view of amendment to the claims by providing proper antecedent basis for the limitation within the claims. However, rejection of claim 25 under 35 USC 112, second paragraph has been maintained as a reason of record as discussed in the previous office action, mailed on 3/31/2010.
4. For rejection of claims 25-28 under 35 USC 112, first paragraph, wherein Applicant argues that the paragraph [0028] as well as figures 1.1, 1.2, 2.1, 2.2, 3.1, 3.2, 5.1, 5.2, 6.1, 6.2, 7.1 and 7.2, all of the foregoing support the claimed subject matter.
5. In response to Applicant's arguments, paragraph [0028] of the instant application describes that the cooled ram (3.1) is arranged at the mould plate (’), is lowered with the latter and together with the mould space (5) forms a space in which the chocolate shell

(1) is at least partially formed, but nowhere in disclosure it fairly describes or suggests which position should be considered as first position or second position, therefore, Applicant has been advised to amend the specification by describing first and second position of ram is configured to selectively move **into and out of the mold between a first position and a second position** for at least partially forming an outer shell from the consumable material as cited in claims. The essential goal of the description of the invention requirement is to clearly convey the information that an applicant has invented the subject matter which is claimed. *In re Barker*, 559 F.2d 588, 592 n.4, 194 USPQ 470, 473 n.4 (CCPA 1977). Another objective is to put the public in possession of what the applicant claims as the invention. See *Regents of the University of California v. Eli Lilly*, 119 F.3d 1559, 1566, 43 USPQ2d 1398, 1404 (Fed. Cir. 1997), cert. denied, 523 U.S. 1089 (1998).

6. For rejection of claim 26 under 35 USC 102 as being anticipated by (US 3,587,132), wherein Applicant argues that examiner then goes on for thirty-five lines to explain how this reference is being read on independent claim 26, which speaks for itself that the Examiner's rejection is without merit.

7. In response to Applicant's arguments, Applicant represents remarks with a general allegation that the claim defines a patentable invention without specifically pointing out how the language of the claim patentably distinguishes claimed limitations from the reference, therefore, Applicant advised to discuss the reference applied against the claim, explaining how the claim avoids the reference or distinguish from the claimed invention.

8. For rejection of claim 25, wherein Applicant argues that the passage (10) in injection rod (9) is meant to inject a chocolate stream into the mold, and the examiner's interpretation of the references in rejecting claim 25 are without merit.

9. In response to Applicant's argument, **Binley (US 5,409,722)** discloses an invention related to manufacture consumable product, wherein invention comprises two separable mould surfaces, which defines a closed cavity as a mould containing

consumable product, such as solid fat containing product, especially **chocolate product** (See col.2 lines 1-5); and a **ram (2)** which is held at **–below 0 C** in **associated with cooling device** (See examples 1-2), wherein the cooling ram (2) having **an axial bore (8)** (See figure 1), and the ram (2) is configured to selectively move into and out of the mold in order to form shell of the consumable product (See figures 1-2). However, instant disclosure fails to teach or suggest first and second positions of the water cooled ram for making outer shell, therefore, for the examination purpose examiner considering the open and closed positions of the mold as first and second position of the ram as cited in claim. Furthermore, Binley ('722) further teaches that insert (3) having **an injection rod (9) is received within the axial bore (8) of the cooling ram (2)** (See col.3 lines 30-42), wherein end of rod (9) is configured to move within the axial bore (See figures 1-2), thus rod (9) would be used as **a displacement ram** as claimed. Furthermore, Applicant's arguments, such as, "the passage (10) in injection rod (9) is meant to inject a chocolate stream into the mold", which is counted as intended use of the structural element of the prior art, and, Applicant did not specifically point out that how the displacement ram of the prior art is distinguished over the claimed displacement ram as cited in the claim of the instant application. Thus, Applicant's arguments are fully considered but not found persuasive, therefore, rejection of claim 25 under 35 USC 103(a) has been maintained.

10. For rejection of claim 27, wherein Applicant argues that the Examiner has interpreted the references in a manner which defy the invention as a whole concept of 35 USC 103, and this rejection is improper.

11. In response to Applicant's arguments, Applicant represents remarks with a general allegation that the claim defines a patentable invention without specifically pointing out how the language of the claim patentably distinguishes claimed limitations from the reference, therefore, Applicant advised to discuss the reference applied against the claim, explaining how the claim avoids the reference or distinguish from the claimed invention.

12. For rejection of claim 28, Applicant argues how the primary reference to Johnson can apply to claim 28 as presented is beyond Applicant's representative's imagination. Applicant argues that this rejection is without merit.

13. Applicant's arguments are fully considered but they are moot in view of the proposed amendment to the claim 28, because claim did not define the claimed limitation such as, "...**the mold containing a consumable material...**", wherein underlined features of the apparatus have not been defined earlier, therefore, reconsideration of the prior arts of record, as well as possible consideration of other arts would be necessary to determine if the new claimed limitations were not taught or suggested by the prior arts of record.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DIMPLE N. BODAWALA whose telephone number is (571)272-6455. The examiner can normally be reached on Monday - Friday at 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, PHILLIP C. TUCKER can be reached on (571) 272-1095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/D. N. B./

Examiner, Art Unit 1791

/Philip C Tucker/

Supervisory Patent Examiner, Art Unit 1791